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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/316,651	05/21/1999	DR. NORM FAIOLA PH.D.	270P109	8093

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EXAMINER

NGHIEM, MICHAEL P

ART UNIT PAPER NUMBER

2863

DATE MAILED: 04/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/316,651

Applicant(s)

FAIOLA PH.D. ET AL.

Examiner

Michael P Nghiem

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 330-449 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 330-385, 393-398 and 404-438 is/are allowed.
- 6) ☒ Claim(s) 386-388, 399, 400, 439, 440 and 442-449 is/are rejected.
- 7) ☒ Claim(s) 389-392, 401-403 and 441 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

The Amendment filed on December 31, 2003 has been acknowledged.

### ***Claim Objections***

1. Claims 442-444 are objected to because of the following informalities:

- "said identifier" lacks antecedent basis.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000.

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Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 439, 440, and 442-449 are rejected under 35 U.S.C. 102(e) as being anticipated by Kashimoto et al. (US 6,137,095).

Regarding claim 439, Kashimoto et al. discloses a monitoring system (Figs. 22-25) monitoring food present in at least one serving or storage container (69's), said monitoring system comprising:

- a sensing subsystem (comprising 25) including at least one sensing device (sensors of 69's) generating at least one data stream (via 9), said at least one sensing device adapted to be disposed in said at least one serving or storage container having food (sensors in 69's);
- a processing subsystem (33) nonintegral with said at least one sensing device receiving and processing said at least one data stream (Fig. 24), wherein said processing subsystem encrypts data of said at least one data stream (column 20, lines 5-11, column 26, lines 25-28).

Regarding claim 440, Kashimoto et al. discloses that said sensing subsystem includes a first portable sensor device generating a first data stream (sensor of first 69, Fig. 24), and a second portable sensor device generating a second data stream (sensor of second 69, Fig. 24), and wherein said processor subsystem receives and processes said first and second data streams (Fig. 24).

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Regarding claim 442, Kashimoto et al. discloses that said identifier identifies a sensing device (column 18, lines 58-64).

Regarding claim 443, Kashimoto et al. discloses that said identifier identifies a sensing device type (column 18, lines 58-61).

Regarding claim 444, Kashimoto et al. discloses that said identifier identifies a container (69).

Regarding claim 445, Kashimoto et al. discloses that said sensor device is a cooking utensil incorporating a sensor (69).

Regarding claim 446, Kashimoto et al. discloses that said at least one sensing device is a portable device including a battery (power supply of 69).

Regarding claim 447, Kashimoto et al. discloses that said at least one sensing device is a portable device including a dedicated transmitter wirelessly transmitting sensor data from said sensor device (column 13, line 66 – column 14, line 3).

Regarding claim 448, Kashimoto et al. discloses that said at least one data stream includes sensor data generated by a sensor of said at least one sensing device (Fig.

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23), and wherein said processing subsystem encrypts said sensor data (column 20, lines 5-11, column 26, lines 25-28).

Regarding claim 449, Kashimoto et al. discloses that said processor subsystem includes a display (39b), and wherein said processor subsystem is adapted to display on said display data generated by said at least one sensing device (column 9, lines 45-46).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 386-388, 399, and 400 are rejected under 35 U.S.C. 103(a) as being unpatentable over Filipowski (US 4,884,626).

Regarding claims 386 and 399, Filipowski discloses a monitoring system (Figs. 1-3) monitoring food (F) present in at least first and second serving or storage containers (spaces of 22 divided by 12s, Fig. 2), said monitoring system comprising:

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- a sensing subsystem (Fig. 2) including first sensing device (21E) generating first data stream (Fig. 3), said first sensing device adapted to be disposed in said first serving or storage container (Fig. 2);

- a processing subsystem (comprises 30, Fig. 3) receiving and processing said first data stream (Fig. 3), wherein said first and sensing device is adapted to be inserted into food (Fig. 2).

Regarding claim 387, Filipowski discloses that said first sensing device is a cooking utensil incorporating a sensor (21E is a utensil used for cooking).

Regarding claims 388 and 400, Filipowski discloses that said processing subsystem includes a display (52), wherein said first data stream includes sensor data, and wherein said processing system displays an alarm indicia on said display if said sensor data of one of said data streams satisfies a predetermined condition (column 5, lines 52-57).

Regarding claim 399, Filipowski further discloses that said first sensing device is provided by a probe (68) having an elongated hollow pin section (Fig. 8), said elongated hollow pin section of each probe incorporating a sensor (68 incorporates 21E).

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However, Filipowski does not disclose a second sensing device generating second data stream, said second sensing device adapted to be disposed in said second serving or storage container and said second sensing device is adapted to be inserted into food.

Nevertheless, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide Filipowski with a second sensing device similar to the first sensing device for the purpose of increasing the capability of handling more food. It is noted that the monitoring system disclosed by Filipowski has the capability of storing more food (F) on the upper empty shelf (12S) (Fig. 2).

#### ***Allowable Subject Matter***

4. Claims 389-392, 401-403, and 441 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

5. Claims 330-385, 393-398, and 404-438 are allowed for reasons previously discussed.

#### ***Reasons For Allowance***

6. The combination as claimed wherein a food monitoring system wherein said processing subsystem displays on said display a graph in which said sensor data



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of at least one of said first and second bit streams is plotted over time (claims 389, 392, 401, 402) or said processing subsystem displays on said display battery power level data indicating a battery power level of at least one of said first and second sensing devices (claim 390) or said processing subsystem is adapted to at least one of time stamp or date stamp received data (claims 391, 403) or said at least one sensing device is adapted to be inserted into food (claim 441) is not disclosed, suggested, or made obvious by the prior art of record.

### ***Response to Arguments***

7. Applicant's arguments filed on December 31, 2003 have been fully considered but they are not persuasive.

For the record, in Applicants' responses (September 11, 2002 and February 28, 2003), Applicants did not present all of the claims in accordance with Examiner's Reasons for Allowance (June 11, 2002 and November 29, 2002).

With respect to the 35 USC 102 rejections, Applicants argue that Fig. 1 of Torimitsu does not teach portable sensing devices.

Examiner's position is that Kashimoto et al. teaches portable sensing devices (sensing devices of microwaves 69's) as discussed above.

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Applicants further argue that Kashimoto teaches encryption of password data, which cannot be seriously taken as being anticipatory or suggestive of the claim language of encrypting a data stream generated by a sensing device.

Examiner's position is that Kashimoto teaches that security means (77) and (78) encrypts data stream (9) (Fig. 25, column 20, lines 5-11, column 26, lines 25-28). In addition, said security means (77) and (78) furnish a password (column 20, lines 5-6). However, Kashimoto does not teach encryption of password data (see column 26, lines 25-28).

### ***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

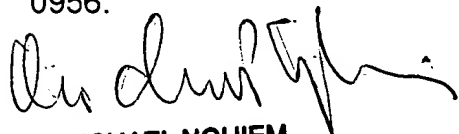
***Contact Information***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Nghiem whose telephone number is (571) 272-2272. The examiner can normally be reached on M-H from 6:30AM – 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached at (571) 272-2269. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-

0956.



**MICHAEL NGHIEM  
PRIMARY EXAMINER**

Michael Nghiem

April 2, 2004